

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LORNA RAE STEINERT

Claimant

VS.

NORCRAFT COMPANIES

Respondent

AND

GENERAL INSURANCE COMPANY OF AMERICA

Insurance Carrier

Docket No. 256,867

LOIS SANDER

Clamant

VS.

STATE OF KANSAS

Respondent

AND

STATE SELF INSURANCE FUND

Insurance Carrier

Docket No. 258,914

PATRICIA PERICOLA

Claimant

VS.

PRESBYTERIAN MANOR

Respondent

AND

IMA.

Insurance Carrier

Docket No. 259,942

LORNA RAE STEINERT
LOIS SANDER
PATRICIA PERICOLA

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ORDER

Claimants request Appeals Board review of Administrative Law Judge Bruce E. Moore's May 1, 2001, Memorandum Decision that denied claimants' motions for the Administrative Law Judge to recuse himself from the above captioned cases. Appeals Board Member David A. Shufelt recused himself from these proceedings. Stacy Parkinson has been appointed Appeals Board Member Pro Tem to replace Mr. Shufelt.

ISSUES

The Administrative Law Judge (ALJ) consolidated these three separate docketed cases for hearing on April 20, 2001. In each of these cases the claimant filed a Motion to Recuse Administrative Law Judge Bruce Moore. ALJ Bruce E. Moore denied the claimant's motions and assessed the costs of the hearings against the claimants, jointly and severally.

The claimants' appeal and list in their request for review the following issues:

- "1. The recusal of Administrative Law Judge Bruce Moore.
2. The assessment of the cost of these proceedings to Claimant."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments contained in the claimants' brief, the Appeals Board (Board) finds it does not have jurisdiction to review the ALJ's Memorandum Decision that denied claimants' motions for the ALJ to recuse himself and assessed the costs against the claimants.

This ongoing dispute between claimants' counsel and ALJ Bruce E. Moore has been before the Board on numerous occasions. The first case was Crone v. Great Bend Cooperation Association, WCAB Docket No. 239,263 (March 2001).¹ In Crone, and all the cases after Crone, the Board dismissed claimant's appeal finding it does not have jurisdiction or authority to review the ALJ's Order that denied claimant's motion for the ALJ to recuse himself from the claim.

¹ See also Garnica v. Dillon Companies, Inc., WCAB Docket No. 255,807 (March 2001) (This order includes ten other separate docketed cases).

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The Board concludes it is not necessary to repeat the findings and conclusions contained in Crone and the other cases that previously addressed this identical issue. Those findings and conclusions are, therefore, adopted by the Board as if specifically set forth in this Order.

At the conclusion of the proceedings before the ALJ, the ALJ assessed the costs of the hearing against the claimants, jointly and severally. Claimants also request the Board to review this order.

The Board also concludes it does not, at this juncture of the proceedings, have jurisdiction to review the ALJ's Order assessing the costs of the hearing against the claimants. The Board only has jurisdiction to review "[a]ll final orders, awards, modification of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge."² The ALJ's order assessing the costs against the claimant is not a final order and is not a preliminary award brought pursuant to K.S.A. 44-534a. The Board finds the ALJ's order is an interlocutory order that the ALJ has authority to make during the litigation of a workers compensation case. The Board, therefore, lacks jurisdiction to review the order until it is contained in a final order or award.

Award

WHEREFORE, it is the finding, decision, and order of the Board that the claimants' request for Board review of the ALJ's May 1, 2001, Memorandum Decision that denied claimants' motions for the ALJ to recuse himself from the above cases and assessed the costs of the hearing against the claimants, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of June 2001.

² See K.S.A. 44-551(b)(1).

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BOARD MEMBER

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- c: Roger Riedmiller, Wichita, Ks.
 Matthew Thiesing, Lenexa, Ks.
 Richard Friedeman, Great Bend, Ks.
 Kathleen Wohlgemuth, Wichita, Ks.
 Bruce E. Moore, Administrative Law Judge
 Philip S. Harness, Director